

**31A-23a-114. Temporary individual or agency license -- Trustee for terminated licensee's business.**

- (1) (a) The commissioner may issue a temporary individual or agency license:
  - (i) to a person listed in Subsection (1)(b):
    - (A) if the commissioner considers that the temporary license is necessary:
      - (I) for the servicing of an insurance business in the public interest; and
      - (II) to provide continued service to the insureds who procured insurance in a circumstance described in Subsection (1)(b);
    - (B) for a period not to exceed 180 days; and
    - (C) without requiring an examination; or
  - (ii) in any other circumstance:
    - (A) if the commissioner considers the public interest will best be served by issuing the temporary license;
      - (B) for a period not to exceed 180 days; and
      - (C) without requiring an examination.
    - (b) The commissioner may issue a temporary individual or agency license in accordance with Subsection (1)(a) to:
      - (i) the surviving spouse or court-appointed personal representative of a licensee who dies or acquires a mental or physical disability to allow adequate time for:
        - (A) the sale of the insurance business owned by the licensee;
        - (B) recovery or return of the licensee to the business; or
        - (C) the training and licensing of new personnel to operate the licensee's business;
      - (ii) to a member or employee of a business entity licensed as an agency upon the death or disability of an individual designated in:
        - (A) the business entity application; or
        - (B) the license; or
      - (iii) the designee of a licensed agency entering active service in the armed forces of the United States of America.
  - (2) If a person's license is terminated under Section 31A-23a-111 or 31A-23a-113, the commissioner may appoint a trustee to provide in the public interest continuing service to the insureds who procured insurance through the person whose license is terminated:
    - (a) at the request of the person whose license is terminated; or
    - (b) upon the commissioner's own initiative.
  - (3) This section does not apply if the deceased licensee or licensee with a disability does not or did not own any ownership interest in the accounts and associated expiration lists that were previously serviced by the licensee.
  - (4) (a) A person issued a temporary license under Subsection (1) receives the license and shall perform the duties under the license subject to the commissioner's authority to:
    - (i) require a temporary licensee to have a suitable sponsor who:
      - (A) is a licensee; and
      - (B) assumes responsibility for all acts of the temporary licensee; or
    - (ii) impose other requirements that are:
      - (A) designed to protect the insureds and the public; and

(B) similar to the condition described in Subsection (4)(a)(i).

(b) A trustee appointed under Subsection (2) shall be appointed and perform the trustee's duties subject to the terms and conditions described in Subsections (4)(b)(i) through (vi).

(i) (A) A trustee appointed under Subsection (2) shall be licensed under this chapter to perform the services required by the trustor's clients.

(B) When possible, the commissioner shall appoint a trustee who is no longer actively engaged on the trustee's own behalf in business as a licensee.

(C) The commissioner shall only select a person to act as trustee who is trustworthy and competent to perform the necessary services.

(ii) (A) If the deceased person, person with a disability, or unlicensed person for whom the trustee is acting was a producer, the insurers through which the former producer's business was written shall cooperate with the trustee in allowing the trustee to service the policies written through the insurer.

(B) The trustee shall abide by the terms of the agency agreement between the former producer and the issuing insurer, except that terms in those agreements terminating the agreement upon the death, disability, or license termination of the former producer do not bar the trustee from continuing to act under the agreement.

(iii) (A) The commissioner shall set the trustee's compensation, which:

(I) may be stated in terms of a percentage of commissions; and

(II) shall be equitable.

(B) The compensation shall be paid exclusively from:

(I) the commissions generated by the former licensee's insurance accounts serviced by the trustee; and

(II) other funds the former licensee or the licensee's successor in interest agree to pay.

(C) The trustee has no special priority to commissions over the former licensee's creditors.

(iv) (A) The commissioner or the state may not be held liable for errors or omissions of:

(I) the former licensee; or

(II) the trustee.

(B) The trustee may not be held liable for errors and omissions that were caused in any material way by the negligence of the former licensee.

(C) The trustee may be held liable for errors and omissions which arise solely from the trustee's negligence.

(D) The trustee's compensation level shall be sufficient to allow the trustee to purchase errors and omissions coverage, if that coverage is not provided the trustee by:

(I) the former licensee; or

(II) the licensee's successor in interest.

(v) (A) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's clients, either directly or indirectly.

(B) The trustee may not purchase the accounts or expiration lists of the former licensee, unless the commissioner expressly ratifies the terms of the sale.

(C) The commissioner may adopt rules that:

(I) further define the trustee's fiduciary duties; and

- (II) explain how the trustee is to carry out the trustee's responsibilities.
- (vi) (A) The trust may be terminated by:
  - (I) the commissioner; or
  - (II) the person that requested the trust be established.
- (B) The trust is terminated by written notice being delivered to:
  - (I) the trustee; and
  - (II) the commissioner.
- (5) (a) The commissioner may by order:
  - (i) limit the authority of any temporary licensee or trustee in any way the commissioner considers necessary to protect insureds and the public; and
  - (ii) revoke a temporary license or trustee's appointment if the commissioner finds that the insureds or the public are endangered.
- (b) A temporary license or trustee's appointment may not continue after the owner or personal representative disposes of the business.

Amended by Chapter 366, 2011 General Session